S.B.CRIMINAL MISC. BAIL APPLICATION NO.4794/2006

Date : 03.11.2006

HON'BLE MR. SATYA PRAKASH PATHAK, J.

Mr. Sandeep Mehta for the applicant.
Mr. V.R. Mehta, Public Prosecutor for State.
Mr. P.K. Sharma for complainant.

I have heard learned counsel for the applicant as well as the learned Public Prosecutor for the State assisted by learned counsel for the complainant and carefully gone through the impugned order.

The contention of learned counsel for the applicant is that infact the prosecutrix is major as would appear from the documents which she has produced for obtaining driving licence. Learned counsel submits that according to this documents, age of the prosecutrix has been stated as 19 years. Learned counsel in this connection has placed before me copies of affidavit submitted for obtaining driving licence, application, phot stat copy of Ration card, marriage certificate issued by the Arya Samaj, Beawar, Janpad, Ajmer and the medical report of the prosecutrix

where age of the prosecutix has been shown as 19 years. He submits that perusal of marriage certificate and other documents reveal that the prosecutrix is a major and present matter is where both the parties were willing and intended to marry each other and marriage took place and subsequently this FIR has been lodged. It has been submitted that the statement recorded of the prosecutrix under Section 164 Cr.P.C., it has been stated that she was subjected to rape forcibly and but this fact is not correct.

On the other hand, learned Public Prosecutor assisted by learned counsel for the complainant have submitted that educational mark-sheet etc. issued by the Board of Rajasthan discloses that she was below 18 years of age and regarding driving licence it is quite possible that for procuring driving licence, date of birth was not correctly written in the application and in the affidavit. It is submitted that there is no reason to disbelieve the secondary mark-sheet and as per the mark-sheet age of the prosecutrix is below 18 years and she was minor, therefore, the matter of consent in above circumstances will not help the accused applicant for

the purpose of granting bail to him. In last, it is prayed that that the the applicant should not be enlarged on bail.

I have considered the submissions made before me.

Without expressing any opinion on the merit of the case while taking into consideration the overall facts and circumstances of the present case, I do not feel inclined to grant bail to the applicant at this stage and the application for bail requires to be dismissed. The bail application stands dismissed. However, the learned trial court shall expedite the trial and shall record statement of the prosecutirx and the Doctor in preference, thereafter, if any bail application is moved on behalf of the applicant, then, the learned trial court shall consider the same in accordance with law.

(SATYA PRAKASH PATHAK), J.

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